

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 29 2 53 PM '94
MM Docket No. 94-85

Dispatched BY

Amendment of Section 73.202(b), RM-8482
Table of Allotments,
FM Broadcast Stations.
(Falmouth and Mashpee,
Massachusetts)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 14, 1994; Released: July 28, 1994

Comment Date: September 19, 1994
Reply Comment Date: October 4, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by J.J. Taylor Companies, Inc. ("Taylor"), licensee of Station WFAL(FM), Channel 266A, Falmouth, Massachusetts, requesting the reallocation of its channel to Mashpee, Massachusetts, and modification of its license accordingly.

2. Taylor seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. Taylor advises that the requested allotment to Mashpee is mutually exclusive with the existing allotment of Channel 266A at Falmouth. In support of its request, Taylor states that Station WFAL(FM)'s present facilities (3.7kw ERP at 77m HAAT) are substantially less than the maximum facilities for Class A FM stations due to the protection that must be provided to Station WGIR-FM, Manchester, New Hampshire, Station WWBB, Providence, Rhode Island, and Station WZLX, Boston, Massachusetts. According to Taylor, a considerable area exists from which Station WFAL(FM) can serve Mashpee with full Class A FM facilities and provide the requisite city grade service. Taylor adds that Falmouth (population 4,047)¹ has another FM station.² Thus, Taylor's proposal would bring a first local service to Mashpee (population 7,884) and would not deprive Falmouth of its local service.

3. Based on the information before us, we are unable to determine whether Taylor's proposal would result in a preferential arrangement of allotments. We note that Mashpee is partially within the Hyannis Urbanized Area as defined by the United States Census.³ We question whether Mashpee is deserving of a first local FM service preference,

or whether Mashpee should be credited with the aural services licensed to the Hyannis Urbanized Area.⁴ Taylor is requested to submit information sufficient to show that Mashpee is deserving of such a preference as well as any other information regarding the public interest benefits of this proposal. See *Amendment of the Commission's Rules Regarding Modification of FM & TV Authorizations to Specify a New Community of License (Memorandum Opinion and Order)*, 5 FCC Rcd 7094 (1990). We note that a staff engineering analysis indicates that Channel 266A could be site restricted at Falmouth and operate as a six kilowatt facility without changing its community of license at coordinates 41-32-55 and 70-35-15. At that site, city grade coverage will also be provided to Mashpee. Further, from Taylor's proposed site for Channel 266A at Mashpee, city grade coverage will be provided to the entire community of Falmouth.

4. We believe the public interest could be served by proposing to reallocate Channel 266A from Falmouth to Mashpee, Massachusetts, if Mashpee is found to be deserving of a first local FM preference. Therefore, we shall propose to modify Station WFAL(FM), as requested, to specify Mashpee as its community of license. A staff analysis indicates that Channel 266A can be allotted to Mashpee in conformity with the Commission's rules and regulations at Taylor's specified site.⁵ From that site, city grade service will also be provided to the entire community of Falmouth. Further, both the loss area of Falmouth and the gain area of Mashpee are completely covered by five or more full-time reception services and are, therefore, considered to be well-served areas. The loss area of Falmouth contains 11,809 people and covers approximately 90 square kilometers (34.8 square miles) and the gain area of Mashpee contains 54,183 people and covers approximately 202 square kilometers (78 square miles). In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional channel at Mashpee.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Falmouth, Massachusetts	266A, 270B	270B
Mashpee, Massachusetts	—	266A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

¹ Population figures are taken from the 1990 U.S. Census.

² Station WCIB, Channel 270B, is licensed to Falmouth.

³ According to the 1990 U.S. Census, 1,928 of Mashpee's 7,884 residents are included within the Hyannis Urbanized Area.

⁴ FM Stations WPXC, Channel 275A, and WCOD-FM, Chan-

nel 291B, are licensed to Hyannis, Massachusetts. There are no AM stations allotted to Hyannis.

⁵ The coordinates for Channel 266A at Mashpee are 41-34-45 and 70-30-45.

7. Interested parties may file comments on or before **September 19, 1994**, and reply comments on or before **October 4, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Joseph A. Belisle
Leibowitz & Associates
One S.E. Third Avenue, Suite 1450
Miami, Florida 33131

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.